

REMARKS

This Amendment is presented in response to the Office Action dated January 27, 2010. Since February 27, 2010 fell on a weekend, it is respectfully submitted that this Response is timely submitted, and no extensions are needed.

Claims 38-67 are now pending in this application. Claim 38 has been amended for the purpose of expediting prosecution, without prejudice. The changes to claim 38 relate to the phrase “active agent(s) incorporated into an immediate release pharmaceutically acceptable excipient onto the skin of a human patient at the posterior cervical area in close proximity to the brain stem.” Support for the topical formulation being immediate release is found, for example, at paragraphs 31, 38 and 39 of the specification. Support for the topical preparation being applied at the posterior cervical area in close proximity to the brain stem is found, for example, at paragraphs 41, 69, 70 and 151 of the specification. New claims 45-67 correspond to and find support from original claims 2-37, now cancelled.

Election Requirement

In the Office Action, the Examiner required applicant to elect an invention to which the claims must be restricted from Group I (claims 1-30); Group II (claims 31-37); and Group III (claims 38-44).

In response, Applicant elects Group III.

Election of Species

In the Office Action, the Examiner required Applicant to elect a single species of the following:

1. Species of an active agent.
2. Species of a serotonin agonist.
3. Species of an additional active agent as in Claim 29.
4. Species of a condition.

In response to the Examiner's requirement, Applicant elects as the active ingredient a skeletal muscle relaxant. Applicant elects sumatriptan as the species of serotonin agonist.

Applicant elects analgesics. Applicant elects migraines as the species of a condition.

In the Office Action, the Examiner indicated that Applicant is required in reply to the Office Action to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicants elect tizanidine as the species of skeletal muscle relaxant.

Claims 38, 39, 41, 43, 45-52, 56-58, and 60-66 are readable on the elected species.

It is respectfully submitted that all of the Examiner's requirements have been met by the actions taken in this Amendment.

A favorable action on the merits is respectfully requested.

Respectfully submitted,
DAVIDSON, DAVIDSON & KAPPEL, LLC

By: Clifford M. Davidson
Clifford M. Davidson
Reg. No. 32,728

DAVIDSON, DAVIDSON & KAPPEL, LLC
Patents, Trademarks and Copyrights
485 Seventh Avenue, 14th Floor
New York, New York 10018
(212) 736-1940